

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, JANUARY 26, 2010

7 P.M. COUNCIL MEETING

CALL TO ORDER - Call to order in the Council Chambers

SALUTE TO THE FLAG

ROLL CALL

PRESENT:

Mayor Melinda Hamilton
Vice Mayor Christopher Moylan
Councilmember Ron Swegles
Councilmember Anthony (Tony) Spitaleri
Councilmember David Whittum
Councilmember Dean Chu
Councilmember Jim Griffith

ABSENT:

None.

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Finance Mary Bradley
Director of Community Development Hanson Hom
Director of Public Safety Don Johnson
Director of Public Works Marvin Rose
Senior Management Analyst Pete Gonda
City Clerk Kathleen Franco Simmons

CLOSED SESSION REPORT FOR JANUARY 26, 2010

Closed Session pursuant to Government Code Section 54956.8 – Conference with Real Property Negotiator

Vice Mayor Moylan reported a closed session was held; direction was given and no action was taken.

SPECIAL ORDER OF THE DAY – Mayor Hamilton presented a proclamation for Sunnyvale Reads Month, received by Library Director Lisa Rosenblum

PUBLIC ANNOUNCEMENTS

Vice Mayor Moylan announced the return of Sunnyvale Councilmember Otto Lee from his tour of duty in Iraq.

Councilmember Spitaleri announced the recruitment for two new members to the Child Care Advisory Committee.

Councilmember Swegles announced the Rotary Club of Sunnyvale will be holding their Annual Crab Feed at Saint Cyprian Church on February 20.

Prasad Panchangam announced a yoga-related campaign to promote healthier living.

Councilmember Otto Lee, attending as a member of the audience, explained his current military status and thanked the City and Council for their support.

Mayor Hamilton acknowledged Boy Scout Troop Den 7 was in attendance at the Council meeting.

PRESENTATION – Presentation from Lisa Lang, Vice President of Communications and Government Relations with the San Francisco 49ers, on the Proposed Santa Clara Stadium.

PRESENTATION – Finance Director Mary Bradley and Senior Management Analyst Pete Gonda presented a review of the Sunnyvale Centralized Purchasing Function.

CONSENT CALENDAR

A member of the public requested to pull Item 1.E from the Consent Calendar.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded the motion to approve the Consent Calendar, with the exception of Item I.E.

VOTE: 7 - 0

1.A. Approval of Council Meeting Minutes of January 12, 2010

1.B. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

**1.C. RESOLUTION Approval of Resolution to Submit Applications for Funding under the
RTC 10-015 Statewide Park Development and Community Revitalization Act of
2008 (Proposition 84)**

Staff Recommendation: Adopt the resolution authorizing staff to apply for funds from the Statewide Park Development and Community Revitalizations Act of 2008.

**1.D. RESOLUTION Resolution to Accept State Infill Infrastructure Grant Funds and to
RTC 10-020 Loan Funds to MP Fair Oaks I, L.P. for the Fair Oaks Senior Housing
Project**

Staff Recommendation: Adopt the resolution to accept State Infill Infrastructure Grant Funds and to loan funds to MP Fair Oaks I, L.P. for the Fair Oaks Senior Housing Project.

1.E. RTC 10-024 Approval of Budget Modification No. 17 to Recognize Grant Funding and Appropriate Funds for Federal Stimulus Energy Efficiency and Conservation Projects

Public Hearing opened at 7:42 p.m.

Werner Gans stated his appreciation for the City's Light Emitting Diode Streetlight Retrofit Project; thereby reducing energy costs and being more environmentally friendly.

Public Hearing closed at 7:44 p.m.

MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded the motion to authorize the City Manager to execute any required agreements to secure grant funding and implement the Light Emitting Diode Streetlight Retrofit Project, the Climate Action Plan, and the Acterra Home Energy Audits and approve Budget Modification No. 17 to: (1) appropriate \$1,142,500 of awarded funds to new project Light Emitting Diode Streetlight Retrofit; (2) appropriate \$100,000 of awarded funds to new project Climate Action Plan; and (3) appropriate \$49,500 of awarded funds to new projects Acterra Home Energy Audits.

VOTE: 7-0

Contracts: Sunnyvale Works!

1.F. RTC 10-018 Award of Sunnyvale Works! Bid No. F0911-42 Community Center Gas Line Replacement

Staff Recommendation: Award a contract in the amount of \$143,000, to Lewis & Tibbitts, Inc., for the subject project, and authorize the city manager to execute the contract when all necessary conditions have been met: and approve a project contingency in the amount of \$21,450.

1.G. RTC 10-019 Award of Sunnyvale Works! Bid No. F0907-06 Sulfur Dioxide Equipment Replacement - Sodium Bisulfite System and Approval of Budget Modification No.18

Staff Recommendation: Award a contract in the amount of \$396,000 to Pacific Infrastructure Corporation, for the subject project, and authorize the city manager to execute the contract when all necessary conditions have been met; and approve a project contingency in the amount of \$59,400; and approve Budget Modification No. 18.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Pat Castillo encouraged Council to continue the dialogue between the City and the 49ers. Castillo stated she hoped the City could cooperate with the Cities of San Jose and Santa Clara, doing whatever was necessary to move forward with the project.

Jan Boehm stated she wanted to allay City fears regarding parking and traffic issues with the potential new 49ers stadium. Boehm suggested with the multitude of freeways, expressways, and transit options, increased congestion to Sunnyvale would be minimal. Boehm added there would be additional hotel, merchant, restaurant, and sales tax revenues due to the influx of visitors.

Jack Walker, Sunnyvale Chamber of Commerce Chairperson, stated the Chamber was in support of the 49er project due to the significant beneficial impact to the businesses in Sunnyvale. Walker stated the City should stay actively engaged with the 49ers and other cities to ensure that those potential negative impacts are properly mitigated.

Joan Bassett stated she was in favor of the project noting the additional jobs and revenues generated without Sunnyvale participating in the costs of building the stadium. Bassett addressed the parking and traffic concerns stating the 49ers, as well as, the City of Santa Clara have determined there would be more than adequate parking even though many fans would be taking public transportation.

Len Rohde spoke as a representative from the Diners for Niners, a group of owners and managers in Sunnyvale and Santa Clara that support the stadium project. Rohde stated he believed as a business owner the 49ers would be an economic asset to the region, particularly Sunnyvale. Rohde added the 49ers as an organization would help the community not only fiscally but by providing youth activities and community outreach.

Lisa Santillan stated she did not see any traffic issues due to the multitude of driving options in that area and approved of the 49ers' proposal mentioning the importance of the new jobs created that would only help those in the community.

Larry Stone, former Mayor of Sunnyvale and Real Estate Developer, emphasized the Great America site offers quick and easy access to major multi-lane freeways and expressways and although he was opposed to the San Jose Sharks being in Downtown San Jose, he has realized what a success that has become.

Lizandro Carrasco spoke on behalf of State Senator Elaine Alquist who represents Sunnyvale in the State Senate. Carrasco stated she is a strong supporter of the stadium which will bring 6,000 jobs into Santa Clara County. Carrasco stated Senator Alquist wishes Sunnyvale and Santa Clara could find solutions to benefit the entire region.

Josue Garcia, with the Building and Construction Trades Council, asked Council to support the stadium because he noted the construction unemployment rate is 30%. Garcia stated he goes to union halls and the morale is very low due to the current economic climate. Garcia added Council has the ability to improve their condition by approving the stadium initiative.

Patrick Walz, representing the Sunnyvale Cool Cities, provided a handout that detailed recommendations for various city departments on sustainability.

PUBLIC HEARINGS/GENERAL BUSINESS

**2. ORDINANCE Amendment to Sunnyvale Massage Ordinances (Chapter 9.41) to
RESOLUTION Comply with Senate Bill 731
RTC 10-021**

Director of Public Safety Don Johnson provided the staff report.

Councilmember Swegles confirmed with Director Johnson that the fees charged for massage parlor permits will recoup all costs to the City.

Public Hearing opened at 8:02 p.m.

Yim Murphy, owner of Massage Envy in Sunnyvale expressed concerns about the licensing process and asked questions of staff. Mayor Hamilton stated that staff would get back to her to respond to her questions.

Public Hearing closed at 8:06 p.m.

Councilmember Swegles asked Director Johnson the difference between a national and state license. Director Johnson stated the current Senate Bill allows for a state license or for a municipality to license and confirmed for Councilmember Swegles that a massage parlor already operating and certified would fall under a grandfather clause.

Councilmember Chu asked Director Johnson if the state licensing process or local agency process is more stringent. Director Johnson stated that both processes require a background and criminal history check, but the local process would probably be more stringent than the state process.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded the motion to approve Alternative 1, Adopt the Ordinance in Attachment A and the Resolution in Attachment B.

City Clerk Kathleen Franco Simmons read the ordinance title for the record.

VOTE: 7 - 0

**3. MOTION 2010 Priority Issues and Legislative Advocacy Positions
RTC 10-016**

Assistant City Manager Robert Walker provided the staff report.

Councilmember Swegles asked if Council can wait to vote until the pending legislation regarding protecting City funds is received next week. Assistant City Manager Walker stated that action taken tonight would not preclude Council from taking other action in the future.

Mayor Hamilton stated she would be happy to put the issue on the agenda. Councilmember Griffith elaborated on Councilmember Swegles comments, referencing page 2 of Attachment A, 732. Councilmember Griffith stated there's a move in the state to transfer some Proposition 42 funds to be Highway Users Tax (HUTA) funds, at which point the funds are more vulnerable to raiding.

Public Hearing opened at 8:13 p.m.

Michelle Bellissimo and Yim Murphy commented about massage parlor licensing. Mayor Hamilton stated that the City Attorney and Director of Public Safety will follow up with Ms. Murphy to answer her questions.

Public Hearing closed at 8:16 p.m.

Councilmember Swegles provided information about the status of the closure of Onizuka Air Force Station. Councilmember Swegles stated that HUD is backlogged and we have not had formal approval of the plan we've submitted. Councilmember Swegles stated the VA has been granted a large sum of money to renovate the building on Onizuka which would create a problem going forward. City Manager Gary Luebbers stated he had a meeting at Onizuka and the VA has been funded and they are in the process of awarding a contract on renovation of the blue cube. Councilmember Swegles confirmed with City Manager Gary Luebbers that if that happens, there will not be enough space for an auto mall because of where the building is located on the property.

Mayor Hamilton asked the City Attorney about the status of Transient Occupancy Tax (TOT) with online travel companies. City Attorney David Kahn responded that there is currently ongoing litigation involving the City of Sunnyvale and a number of other cities with respect to online travel providers, but he cannot comment on the status of the litigation. City Attorney Kahn stated it appears that legislation may be pushed by the companies to try to limit the effect of that litigation. City Attorney Kahn confirmed for Mayor Hamilton that we should be able to continue to pursue recovery up until the date the legislation passes.

MOTION: Councilmember Griffith moved and Councilmember Swegles seconded the motion to approve Alternative 2, Modify Attachment A, *DRAFT Council Policy 7.3.2 Legislative Advocacy Positions*, including the positions, Priority Issues, and 2010 League of California Cities and National League of Cities Resolutions as follows:

On page 2, section 1, add a statement specifically opposing any reclassification of Proposition 42 money to be treated as Highway Users Tax money.

VOTE: 7 - 0

**4. MOTION Revisiting the Council Policy on "Dropped" Study Issues
RTC 10-017**

Assistant City Manager Robert Walker provided the staff report.

Public Hearing opened at 8:22 p.m.

No speakers.

Public Hearing closed at 8:22 p.m.

MOTION: Councilmember Moylan moved and Councilmember Spitaleri seconded the motion to approve Alternative 5, Other Action as Directed by Council:

In Attachment A, Council Policy 7.3.26, Section 4, Drop or Deferral of Issues: eliminate Part B; in Part A where it says "any issue that is dropped be a majority vote of Council will not be eligible for consideration at the next year's Workshop," add the phrase, "unless sponsored by a majority of the Council;" and replace the sentence, "Any issue that has been deferred twice will automatically be removed from the list of issues for Council consideration..." with "Any issue that is deferred shall be brought back for reconsideration the next year."

Vice Mayor Moylan stated the purpose of the clean up is to ensure the wishes of a majority of Council do not get overruled either by a minority of the Council or by a board or commission. Any action Council takes sometimes gets reconsidered. If it turns out that Council dropped a study issue and then circumstances changed so that a majority of Council would like to put it back in the next year, Council shouldn't ban themselves from doing what it normally does when it wants to reconsider an issue, but it should take a majority of Council to come back and reconsider something that's dropped. Similarly, when Council defers an issue, it is intended to come back the next year, therefore an issue deferred two years in a row should not count as a "drop." Vice Mayor Moylan stated Council should be able to defer issues throughout an economic downturn, therefore two defers should not turn into a drop because that's not the will of the Council.

Councilmember Griffith stated he supports the motion. He stated his biggest concern was the existing phrase that any issue that has been deferred twice will automatically be removed from the list of issues, as there are a number of issues on this year's agenda that require a large number of consultant hours or a large amount of staff time. Councilmember Griffith stated this would force him to vote to rank an issue he didn't believe we could afford to do, or voting to drop an issue he thought was a good idea. Councilmember Griffith added Council should not be a place where good ideas come to die.

Councilmember Whittum stated he will not support the motion. Councilmember Whittum stated he likes the idea of not dropping issues because they were deferred twice, but the motion presents two problems. Councilmember Whittum stated that when there is a change in the composition of Council it frustrates a new discussion based on new people and also frustrates the incorporation of new information between one year and the next. Councilmember Whittum stated if someone wants to bring up a policy change, we've limited ourselves to the once per year workshop.

Mayor Hamilton agreed with the idea of requiring a majority to bring an issue back, but suggested that people are equating deferring with ranking something below the line. Councilmember Hamilton stated it's possible to rank a study issue and have it fall below the line, but that is Council's indication that it is important enough that we want to rank it. Mayor Hamilton stated previously there were issues that were held over for six and seven years because they kept getting deferred. Councilmember Hamilton stated that if the issue is not valued enough to rank, even if it falls below the line, then it should at some point be dropped, which was the reason for adding that if an issue was deferred for two consecutive years, maybe there wasn't enough interest to keep it on the list. Mayor Hamilton suggested the two items be split and let each one stand on its own merits.

VOTE: 5 - 2 (Mayor Hamilton and Councilmember Whittum dissented)

**5. MOTION 2009-0799 - Selection of Two Councilmembers for the General Plan
RTC 10-023 Consolidation Advisory Committee**

Community Development Director Hanson Hom provided the staff report.

Public Hearing opened at 8:32 p.m.

No speakers.

Public Hearing closed at 8:32 p.m.

Mayor Hamilton asked which Councilmembers were interested in serving.

Councilmember Whittum expressed interest.

Vice Mayor Moylan expressed interest.

Councilmember Griffith expressed interest.

Mayor Hamilton stated that each Councilmember will have two votes and whoever gets the most votes will get the position. Mayor Hamilton provided each interested Councilmember an opportunity to speak about why they would like to serve on the committee.

Councilmember Whittum stated he is available to attend all of the meetings and that he's enjoyed studying different parts of the General Plan and would look forward to serving and to hearing the input from the commissioners. Councilmember Whittum stated that if he is not selected, he would still be interested in attending the meetings to hear the input.

Vice Mayor Moylan confirmed with staff that Council could have an alternate.

Vice Mayor Moylan stated that during his five years on the Planning Commission, he went through every volume of the General Plan, and there are pieces of it that have needed updating for many years. Vice Mayor Moylan stated it would provide a great sense of closure to fix some of the things he's wanted to fix for years. Having sponsored the study issue regarding the Community Vision overarching Sub-Element of the General Plan, Vice Mayor Moylan stated he would like the privilege to be involved in how we incorporate all of the other Sub-Elements under it. Vice Mayor Moylan stated he would love the chance to leave the General Plan in much better shape than when he first got started on the Planning Commission.

Councilmember Griffith stated this is one of the most important things being done this year and one of his specific targets is incorporating the element of sustainability which figures in to many of the elements. Councilmember Griffith stated that as he serves on the Recycling and Waste Reduction Commission, having a Councilmember bringing a sustainability eye to the process would be an asset.

Mayor Hamilton stated that the top two vote getters will get the positions and the third person will be the alternate.

Councilmember Spitaleri inquired if there would be a potential legal problem if additional Councilmembers attend the meetings since the recommendations are going to come back to Council for a vote. City Attorney Kahn stated Councilmembers can attend meetings that are open to the public as an observer. If the participation was limited to the two Councilmembers who are on the committee, there wouldn't be a problem. If there's more participation by the rest of Council and it comes before Council for action, there could be a Brown Act issue. City Attorney Kahn stated he will take a look at this issue and advise Council before the meetings take place.

Mayor Hamilton stated each Councilmember has two votes.

Candidate 1: Councilmember Whittum

VOTE: 1 – 0 (Mayor Hamilton, Vice Mayor Moylan and Councilmembers Swegles, Spitaleri, Chu and Griffith abstained.)

Candidate 2: Vice Mayor Moylan

VOTE: 6 – 0 (Councilmember Whittum abstained)

Candidate 3: Councilmember Griffith

VOTE: 7 – 0

Mayor Hamilton stated Vice Mayor Moylan and Councilmember Griffith were selected for the General Plan Consolidation Advisory Committee, and Councilmember Whittum will be the alternate.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Swegles invited Council to join him for an event at the upcoming Farmer's Market on Saturday.

Councilmember Swegles provided information regarding a convention in September, and stated he's looking forward to the programs the committee has approved for the convention.

Councilmember Griffith reported that he attended the Valley Transportation Authority (VTA) Policy Advisory Committee meeting. Councilmember Griffith stated they received information only items on plans to convert the 237/880 connectors from carpool lanes to carpool or toll lanes, and the plan is to have it rolled out in July 2011.

Councilmember Spitaleri reported from the California League of Cities Employee Relations Committee regarding pension reform, the committee is supporting the League's position that those issues of change in pension be done at the local level.

Mayor Hamilton reported that she was in Washington, D.C. last week at the U.S. Conference of Mayors. She stated they had an hour with President Obama, and an hour with Vice President Joe Biden, Economic Advisor Larry Summers and Timothy Geithner from the Treasury. They also had an hour with Michelle Obama and eight other cabinet members. Mayor Hamilton added she will prepare a written report and distribute it to Council.

Vice Mayor Moylan stated he thinks the trip report is a great idea and thanked the Mayor for taking the lead on it.

NON-AGENDA ITEMS & COMMENTS

- Council

Councilmember Swegles commented that he abstained from approving the January 5 Council meeting minutes at the last meeting because he hadn't had a chance to review them. He stated he's since had a chance to review them and accepts the vote of the Council and congratulates Melinda Hamilton on being selected Mayor. Councilmember Swegles commented that former Councilmember Howe's parting comments were not included in the minutes, and stated they can be viewed on the Webcast of the Council meeting.

Councilmember Griffith stated he posted a trip report to his blog at <http://www.dweeb.org>.

Mayor Hamilton reported that she and Councilmember Whittum attended a meeting with the Moffett Park Transportation and Business Association and their biggest complaint is that they need a substation to provide more consistent power. Mayor Hamilton stated that PG&E will not build a substation there and has put \$3.5 million into a ballot initiative which would require a 2/3 vote for municipalities to expand municipal power. Mayor Hamilton stated the City should look at opposing any local control or any state-mandated voting requirements on expanding municipal power.

- Staff

City Manager Gary Luebbers reported that a press release will be issued by publicceo.com stating that Sunnyvale Works! has earned the Public Works Project of the Year Award as part of PublicCEO's first annual local government awards.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Board of Library Trustees Meeting of January 4, 2010

ADJOURNMENT TO THE ONIZUKA LOCAL REDEVELOPMENT AUTHORITY

Mayor Hamilton adjourned to the Onizuka Local Redevelopment Authority at 8:56 p.m.

Kathleen Franco Simmons
City Clerk

Date